

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY 6
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JENNIFER MCPHAIL,
PLAINTIFF,

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V.

A-14-CV-573-LY

THE CITY OF AUSTIN, TEXAS AND
MARC OTT, IN HIS OFFICIAL CAPACITY
AS CITY MANAGER,
DEFENDANTS.

ORDER

Before the court is “Defendants’ Rule 12(b)(1) & (6) Partial Motion to Dismiss” filed June 20, 2014 (Doc. #3). Defendants seek dismissal of Plaintiff’s state-law claims, including claims under the Texas Architectural Barriers Act, the Texas Human Resources Code, and the Uniform Declaratory Judgments Act, for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) and failure to state a claim pursuant Federal Rule of Civil Procedure 12(b)(6).

Plaintiff’s response to the motion was due July 7, 2014. *See* W.D. Tex. Local R. CV-7(e). To date, however, Plaintiff has not filed a response. Thus, pursuant to Local Rule CV-7(e), Defendants’ motion to dismiss may be granted as unopposed if review of the pleadings reveals that Plaintiff’s claims should be dismissed for lack of subject-matter jurisdiction. *See Home Builders Ass’n of Mississippi, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998); *Cf. John v. Louisiana Bd. of Trs. for State Colls. & Univs.*, 757 F.2d 698, 707-10 (5th Cir. 1985). Having reviewed the record in this cause, the court finds that the motion to dismiss should be granted and all Plaintiff’s claims against Defendants should be dismissed without prejudice for lack of jurisdiction.

IT IS THEREFORE ORDERED that “Defendants’ Rule 12(b)(1) & (6) Partial Motion to Dismiss” filed June 20, 2014 (Doc. #3) is **GRANTED AS FOLLOWS**: Plaintiff Jennifer McPhail’s state-law claims against Defendants The City of Austin, Texas and Marc Ott are **DISMISSED WITHOUT PREJUDICE** for lack of subject-matter jurisdiction.

With regard to any remaining claims, **IT IS FURTHER ORDERED** that Plaintiff Jennifer McPhail shall file an amended complaint in compliance with Federal Rule of Civil Procedure 8 **on or before August 22, 2014**.

In all other respects, Defendants’ motion is **DENIED**.

SIGNED this 13th day of August, 2014.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE